

ASSEMBLY BILL

No. 2574

Introduced by Assembly Member Alquist

February 21, 2002

An act to amend Sections 3504, 3505, 3506, 3507, 3507.1, 3507.3, 3507.4, and 3508 of the Civil Code, relating to nuisances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2574, as introduced, Alquist. Nuisance: human or animal cruelty.

Existing law declares as a nuisance the exhibition of any motion picture, if any intentional killing of, or cruelty to, a human being or an animal is shown in the motion picture and if intentional killing of, or cruelty to, a human being or an animal actually occurred in the production of the motion picture for the purpose of that production.

This bill also would declare as a nuisance the exhibition of any television production or video, as defined, made in whole or in part after January 1, 2003, that shows the intentional killing of, or cruelty to, a human being or an animal under those circumstances.

Existing law defines “killing” and “cruelty” for those purposes to mean conduct that both (1) results in the death or the infliction of any physical injury or wound, including, but not limited to, any temporary or permanent physical harm resulting from the administration of any drug or chemical and (2) is patently offensive to the average person, applying contemporary statewide community standards.

This bill would delete from the definition of “killing” and “cruelty” the requirement that the conduct be patently offensive to the average person, applying contemporary statewide community standards.

Existing law makes any violation or disobedience of an injunction or order issued against the exhibition of a motion picture declared a nuisance, punishable as a contempt of court by a fine of not less than \$200 nor more than \$1,000.

This bill would increase that range of permissible fines that may be imposed to not less than \$5,000 nor more than \$50,000.

The bill would make conforming changes to related provisions of law governing the maintenance of a legal action against the exhibition of the motion picture, television production, or video alleged to be a nuisance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3504 of the Civil Code is amended to
2 read:

3 3504. As used in this title:

4 (a) “Animal” means any *sentient creature, including, but not*
5 *limited to, an amphibian, bird, fish, mammal or reptile. It does not*
6 ~~include any fish or insect.~~

7 (b) “Motion picture” means any motion picture, regardless of
8 length or content, which is exhibited in a motion picture theater *in*
9 *California* to paying customers, or is exhibited on television *in*
10 *California* to paying customers or under the sponsorship of a
11 paying advertiser. It shall not include motion pictures made for
12 scientific, research, or educational purposes, ~~or motion pictures~~
13 ~~exhibited as home movies, or amateur films, which are shown free~~
14 ~~or at cost to friends, neighbors or civic groups to be used in a~~
15 *school or learning atmosphere.*

16 (c) “Person” means individuals, corporations, associations,
17 partnerships, limited liability companies, trustees, lessees, agents
18 and assignees.

19 (d) “Television production” means any production to be shown
20 *in California* which is made for the purpose of showing on
21 television to paying customers or under the sponsorship of a
22 paying advertiser. It does not include a television production made
23 for scientific, research, or educational purposes in a school or
24 learning atmosphere.

25 (e) “Video” means any filming put on tape which will be shown
26 *in California* on television to paying customers or under the

1 *sponsorship of a paying advertiser, distributed to any store for*
 2 *sale, or transferred to any other format, including, but not limited*
 3 *to, CD, DVD, or the Internet. It does not include videos made for*
 4 *scientific, research, or educational purposes to be used in a school*
 5 *or learning atmosphere.*

6 SEC. 2. Section 3505 of the Civil Code is amended to read:

7 3505. (a) The exhibition of any motion picture, *television*
 8 *production, or video*, if any intentional killing of, or cruelty to, a
 9 human being or an animal is shown in the motion picture,
 10 *television production, or video* and ~~such that~~ intentional killing of,
 11 or cruelty to, a human being or an animal actually occurred in the
 12 production of the motion picture, *television production, or video*
 13 for the purpose of ~~such that~~ production, is a nuisance, which shall
 14 be enjoined, abated, and prevented.

15 (b) As used in this section, “killing” and “cruelty” mean
 16 conduct which ~~both (1) results in the death or the infliction of any~~
 17 ~~physical injury or wound, including, but not limited to, any~~
 18 ~~temporary or permanent physical harm resulting from the~~
 19 ~~administration of any drug or chemical, and (2) is patently~~
 20 ~~offensive to the average person, applying contemporary statewide~~
 21 ~~community standards.~~ It does not include conduct committed
 22 against a human being to which the human being has given his or
 23 her consent. ~~In determining whether conduct is patently offensive,~~
 24 ~~the trier of fact may consider any or all of the following: (i) the~~
 25 ~~degree or extent of the physical injury inflicted, (ii) the manner in~~
 26 ~~which the injury is inflicted, (iii) the extent to which the injuring~~
 27 ~~or wounding or acts resulting therein are depicted on the screen,~~
 28 ~~(iv) the number of instances of infliction of injury, wound or harm~~
 29 ~~occurring in the making of the motion picture, and (v) whether~~
 30 ~~such conduct is lawful or unlawful under any provision of law~~
 31 ~~other than this title.~~

32 (c) For the purposes of this section, it shall not be a requirement
 33 that the entire motion picture, *television production, or video* and
 34 all of the conduct resulting therein be taken into account in
 35 determining whether a nuisance exists, and to this end, the
 36 Legislature finds and declares that any specific conduct which
 37 intentionally results in the killing of, or cruelty to, an animal or a
 38 human being in the making of a motion picture, *television*
 39 *production, or video* is unnecessary and is a nuisance, and that if
 40 a motion picture, *television production, or video* cannot be

1 completed in the absence of ~~such~~ *that* conduct, it is, therefore, a
2 nuisance in its entirety.

3 SEC. 3. Section 3506 of the Civil Code is amended to read:

4 3506. ~~Whenever there is~~ *If* reasonable cause *exists* to believe
5 that a nuisance as defined in this title is kept, maintained, or is in
6 existence in any county, the district attorney or the Attorney
7 General, in the name of the people of the State of California, shall,
8 on a proper showing, commence an action in equity to abate and
9 prevent the nuisance and to perpetually enjoin the person
10 conducting or maintaining it, and the owner, lessee or agent of the
11 building, or place, in or upon which the nuisance exists, from
12 maintaining or permitting it. ~~As used herein, a~~ A proper showing
13 to commence an action under this title ~~must~~ *shall* be based upon
14 evidence independent of the motion picture, *television*
15 *production, or video* itself that intentional killing of, or cruelty to,
16 a human being or an animal actually occurred in the production of
17 the motion picture, *television production, or video* for the purpose
18 of ~~such~~ *that* production.

19 SEC. 4. Section 3507 of the Civil Code is amended to read:

20 3507. ~~Whenever~~ *If* an action is initiated under this title to
21 abate an alleged nuisance, an adversary trial on the merits shall be
22 held pursuant to Section 3507.2. If the court finds that the
23 exhibition of the particular motion picture, *television production,*
24 *or video* constitutes a nuisance, it shall issue a permanent
25 injunction to abate and prevent the continuance or recurrence of
26 ~~such~~ *the* nuisance. No temporary restraining order or preliminary
27 injunction shall be granted in ~~such an~~ *that type of* action. An appeal
28 may be taken from an order issuing a permanent injunction, ~~and~~
29 *but* any injunction issued pursuant to this title by the trial court
30 ~~may~~ *shall not* be stayed by ~~such~~ *the* court pending the outcome of
31 ~~such~~ *the* appeal. No appeal may be taken from a ruling by the trial
32 court denying an injunction requested under this title.

33 SEC. 5. Section 3507.1 of the Civil Code is amended to read:

34 3507.1. In actions brought under this title, the motion picture,
35 *television production, or video* shall be admissible into evidence.
36 The burden of proof that the exhibition of the particular motion
37 picture, *television production, or video* constitutes a nuisance shall
38 be met by the district attorney or Attorney General only when clear
39 and convincing evidence, independent of the motion picture,
40 *television production, or video* itself, is provided that the acts

1 alleged actually occurred in the production of the motion picture,
2 *television production, or video*.

3 SEC. 6. Section 3507.3 of the Civil Code is amended to read:

4 3507.3. Any violation or disobedience of an injunction or
5 order expressly provided for by this title is punishable as a
6 contempt of court by a fine of not less than ~~two hundred five~~
7 *thousand* dollars ~~(\$200)~~ (\$5,000) nor more than ~~one~~ *fifty* thousand
8 dollars ~~(\$1,000)~~ (\$50,000).

9 SEC. 7. Section 3507.4 of the Civil Code is amended to read:

10 3507.4. The distributor who furnished a motion picture,
11 *television production, or video* to a person who is made a defendant
12 in an action under this title, and the producer of a motion picture,
13 *television production, or video* which is the subject of this title
14 shall be jointly and severally liable, upon proof and after an
15 opportunity to appear and interpose any appropriate defenses, to
16 ~~such the~~ the person and the exhibitor for damages, including loss of
17 profits, attorney's fees, and other costs of defending ~~such the~~
18 action. ~~Such~~ The distributor and ~~such the~~ the producer shall actively
19 assist in ~~such the~~ the defense to the extent that ~~such the~~ the person
20 possesses information necessary to ~~such the~~ the defense concerning
21 the production of the motion picture, *television production, or*
22 *video* which is not otherwise available to the defendant. ~~The An~~
23 exhibitor ~~shall is not be~~ liable upon any portion of any contract
24 ~~made on or after January 1, 1979,~~ which requires the exhibition or
25 advertisement of a motion picture, *television production, or video*
26 subject to this title on or after the date of the filing of any action
27 under this title, if the motion picture, *television production, or*
28 *video* by final decision of a court is determined to be a nuisance
29 under this title. *A business establishment that sells or rents video*
30 *cassette tapes or digital video discs, and an exhibitor of a motion*
31 *picture, television production, or video determined to be a*
32 *nuisance under this title, is exempt from the liability imposed by*
33 *this title.*

34 SEC. 8. Section 3508 of the Civil Code is amended to read:

35 3508. (a) This title ~~shall~~ *does* not apply to any of the
36 following:

37 (1) The exhibition of any motion picture, *television*
38 *production, or video*, such as a newsreel or documentary,
39 involving acts of killing or cruelty which were not intentionally

1 committed for the purpose of producing the motion picture,
2 *television production, or video.*

3 (2) Any motion picture made, in whole or in part, prior to
4 January 1, 1979, *or any television production or video made in*
5 *whole or in part prior to January 1, 2003.*

6 (3) Any motion picture, *television production, or video* all or
7 part of which has been edited or remade so that any previous
8 conduct which constituted a nuisance under this title no longer
9 appears.

10 (4) The taking of any animal as permitted by any provision of
11 the Fish and Game Code or ~~pursuant thereto~~ in accordance with
12 regulations adopted by the Fish and Game Commission, unless the
13 time, place, or manner of ~~such the~~ taking violates any ~~provision~~ of
14 law, except this title. This title ~~shall apply~~ *applies* to any other
15 animal whether or not the time, place, or manner of the taking is
16 prohibited by any laws other than this title, ~~however, this~~. *This* title
17 shall not apply to the taking of any animal authorized by law in any
18 other jurisdiction, unless the time, place, or manner of ~~such that~~
19 taking is prohibited by law or regulation.

20 ~~(5) A motion picture which includes scenes of killing or cruelty~~
21 ~~to animals if the acts constituting the killing or cruelty were~~
22 ~~authorized by the laws governing such acts in the jurisdiction~~
23 ~~where the scenes were filmed.~~

24 ~~(6) Any motion picture which bears within its contents a~~
25 ~~statement from the producer of the motion picture that all scenes~~
26 ~~depicting animals were filmed without the intentional killing of,~~
27 ~~or cruelty to an animal or that any killing or cruelty to an animal~~
28 ~~was authorized by the laws of the jurisdiction where the scenes~~
29 ~~were filmed or that the film is otherwise exempt under this title.~~

30 ~~(7) Any motion picture if the exhibitor thereof has a written~~
31 ~~signed statement, or a copy thereof, from the producer of the~~
32 ~~motion picture that all scenes depicting animals were filmed~~
33 ~~without the intentional killing of, or cruelty to an animal or that any~~
34 ~~killing or cruelty to an animal was authorized by the laws of the~~
35 ~~jurisdiction where the scenes were filmed or that the film is~~
36 ~~otherwise exempt under this title.~~

1 (b) This title ~~shall~~ *does* not apply in any case in which it would
2 conflict with federal supremacy in the field of television
3 broadcasting.

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